Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	CC Docket No. 96-61
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	
	)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), pursuant to Section 1.429(f) of the Commission's Rules, hereby respectfully submits its comments on the petitions by AT&T Corp. ("AT&T) and Ad Hoc Telecommunications Users Committee et al. ("Ad Hoc") seeking clarification and limited reconsideration of the Commission's *Second Report and Order*, FCC 96-424, ("*Detariffing Order*") issued October 31, 1996, in the above-captioned proceeding. With one exception,[1] Sprint agrees that the modifications and

[1] Sprint does not support AT&T's suggestion to allow nondominant carriers to detariff their international services included in contracts with large customers. The Commission continued to require the filing of tariffs for international portions of bundled domestic and international service offerings because "there is not sufficient evidence in the record to make findings that each of the statutory criteria are met to forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of bundled domestic and international service offerings." *Detariffing Order* at ¶98. AT&T offers nothing which would enable the Commission to reverse such finding. AT&T says that customers may find it confusing to have their bundled services subject to two regulatory regimes.

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clarifications suggested by AT&T and Ad Hoc are reasonable and necessary.[2] The suggested modifications by AT&T and Ad Hoc will lessen the increased costs to carriers and ameliorate the harm to the general public that will be caused by the Commission's mandatory detariffing scheme.

I. THE COMMISSION SHOULD CONTINUE TO ALLOW CARRIERS TO FILE TARIFFS FOR CASUAL CALLERS AND NEW CUSTOMERS.

AT&T requests that the Commission permit carriers to continue to file tariffs to govern their provision of casual calling services and their provision of services to new residential and small business customers. AT&T explains that the "tariffing option" will enable "customers to receive service without advance payment or delay" and will protect "carriers legitimate commercial expectations." Petition at 9.

Petition at 14-15. But, requiring carriers to detariff the international portions of their bundled services may create even more confusion since some carriers may be dominant in some international markets and nondominant in others. Until the Commission is able to examine the unique issues involved in applying its detariffing policies to international services, its decision to require the continuation of tariffs for the international services by nondominant carriers is reasonable and should not be reconsidered.

[2] Sprint's position here should in no way be interpreted as support for the Commission's *Detariffing Order*. Sprint has petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review the *Detariffing Order*. *Sprint v. FCC et al.*, Case No. 97-1009. Sprint's case has been consolidated with the appeals by MCI and the America's Carriers Telecommunication Association of the *Detariffing Order* in Case Nos. 96-1459 and 96-1477 respectively.

Sprint agrees that permitting carriers to retain their tariffs for casual calling and new customers is necessary. The Commission's mandatory detariffing scheme appears to be based on the notion that nondominant carriers should "conduct their business as other enterprises do" and should not be able to rely upon a "regulatory regime that is not available to firms that compete in any other market in this country." *Detariffing Order* at ¶57. But, as Sprint and others have explained to the Commission, unlike most other businesses, common carriers are required by statute to provide service upon demand and this obligation enables users to consume a carrier's services without first entering into a contractual relationship with the carrier. Users, for example, may place a call over a carrier's network simply by dialing the carrier's 10XXX code or may agree to receive a collect call delivered by a carrier other than the one selected by the user. Tariffs establish the legal relationship between a carrier and these "casual" users of its services by providing notice of the rates, terms and conditions of a carrier's services and by obligating these casual users to pay for the services they receive.

The Commission claims that carriers "have options other than tariffs by which they can establish legal relationships with casual callers" and gives as examples obtaining credit card information or a billing number. *Detariffing Order* at ¶58. The problem with the Commission's suggestions here is that they will

make access for casual calling more difficult. Although credit card use is widespread, not everyone has a credit card. A carrier also may be unwilling to allow a casual caller to give a telephone number to which the call is to be billed because of the potential for fraud. Many carriers no longer offer a "billed-to-third number" option because such alternative has led to an increase in fraudulent calling. In any event, during network outages caused by floods, tornadoes or other natural disasters when, presumably, the availability of casual calling is needed the most, the caller may not have a credit card handy or the carrier may be unable someone at the number to be billed for verification.

Moreover, collect calling may become more problematic as a result of the Commission's *Detariffing Order*. The called party, who would otherwise be willing to accept the call, may be unwilling to disclose his credit card number to the operator. Credit card companies do advise their cardholders not to disclose their credit card numbers over the phone unless the cardholders are the ones making the call. Even if the called party did disclose a verifiable credit card number, he may insist upon information from the carrier's operator as to the carrier's rates, terms and conditions thereby increasing the operator's time for handling the call.

The Commission also states that carriers could seek court orders for payment under a "implied-in-fact contract theory."

Id. at fn. 169. The Commission notes that this theory would allow recovery from customers who have "used a carrier's services, with knowledge of the carrier's charges, but has not executed a written contract. But, it is unclear whether an theory of "implied contract" or perhaps one based on "quantum meruit" provides sufficient assurance to the carrier that it could legally collect for the call since a caller could argue that he was not made fully aware of the rates, terms and conditions governing the call. And, because a carrier may be unwilling to rely upon a legal theory which may not be accepted by the courts, it may be unwilling to connect the call. In any case, forcing carriers to rely upon litigation and the courts to secure payment under this theory certainly would increase the carriers' costs which, in turn, will be passed on to their customers in the form of higher rates.

In sum, adopting AT&T's suggestion and allowing carriers to file tariffs for their casual calling services will avoid the above-described deleterious effects. Carriers would be able to continue to offer these valuable services as they do today.

Carriers should also be allowed to continue to utilize tariffs to govern their relationships with their newly presubcribed customers for a defined period of time so that they able to obtain a signed contract from such customers. As AT&T points out (Petition at 11), many customers select their primary interexchange carrier by contacting a business office of their

LECs and can begin to avail themselves of the services of their chosen IXCs within a short period of time thereafter. However, because many LECs often do not immediately inform the IXCs of these new customers, the IXCs do not know the identity of the new users of their networks and obviously cannot send them the materials explaining the rates, terms and conditions of their services, let alone obtain signed contracts or other evidence establishing legally binding relationships. In such circumstances, tariffs would appear to be the only way that a carrier can legally inform its new customers of the conditions of service and obligate them to pay for the services which they use. *See id.* at 12-13.

II. THE COMMISSION MUST CLARIFY THAT THE INTERSTATE SERVICES OF IXCS CONTINUE TO BE GOVERNED BY THE COMMUNICATIONS ACT AND NOT BY STATE LAW.

Sprint also supports AT&T's request that the Commission clarify that the Communications Act and not state law governs the lawfulness of a carrier's rates, terms and conditions for interstate services. Such clarification is necessary because of the Commission's cursory observation in the *Detariffing Order* (¶42) that, in the absence of tariffs, "consumers ... will be able to pursue remedies under state consumer protection and contract laws."

While the purpose of this statement is far from clear, it may have the unfortunate consequence of being interpreted as authorizing the various States to determine the lawfulness of

carriers' interstate service offerings. But, as AT&T explains, the elimination of tariff filings with the Commission does not eliminate the carriers' obligations to provide their interstate services in accordance with the requirements imposed by Section 201 and 202 of the Act. On the contrary, the Commission emphasizes that the carriers remain subject to Sections 201 and 202 even though they may no longer be allowed to file tariffs with the Commission governing the rates, terms and conditions of such offerings. *Detariffing Order* at ¶27. In fact, it has prescribed that carriers must make the details of their service offerings public so that customers can monitor the carriers' compliance with Section 201 and 202 and, if necessary, bring complaints before the Commission. *Id.* The Commission has exclusive jurisdiction to enforce Sections 201 and 202 and nothing in the Communications Act as amended by the Telecommunications Act of 1996 gives the Commission authority to cede such jurisdiction to the States. AT&T's requested clarification is necessary to "prevent unnecessary litigation and the possible imposition of conflicting obligations on carriers relating to the same services." Petition at 18.

III. THE COMMISSION SHOULD ADOPT AD HOC'S SUGGESTED CHANGES REGARDING THE TREATMENT OF LOCAL ACCESS SERVICES AND PUBLIC DISCLOSURE OF THEIR LARGE-USER CONTRACTS.

Sprint supports Ad Hoc's recommendation that the Commission clarify that the *Detariffing Order* extends to interstate access that IXCs provide pursuant to contracts with large users.

Currently, Sprint tariffs such services because it has been informed by the Commission's staff that the *Detariffing Order* did not permit nondominant carriers to remove their interstate access services from their tariffs.[3] But there is no legitimate reason to continue to tariff such "contract access" services if carriers are precluded from tariffing the other domestic interexchange services that form the remainder of the contract. Sprint only offers access services as part of its end-to-end interstate interexchange services and for no other purpose.

Sprint also supports Ad Hoc's argument that there is no need for carriers to disclose the rates, terms and conditions of their customer-specific offerings. The Commission has stated that it expects nondominant carriers to operate as companies that compete in other markets in this country. *See Detariffing Order* at ¶57 ("...nondominant interexchange carriers should [not] be subject to a regulatory regime that is not available to firms that compete in any other market in this country"). Sprint is unaware of any requirement imposed on firms in such other competitive markets to disclose the terms of their customer specific deals.

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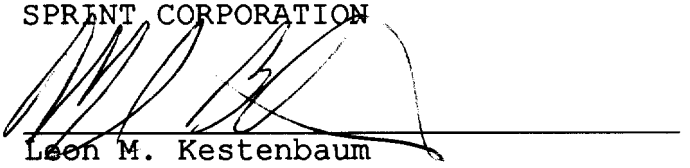
[3] Ad Hoc states that the "Commission staff has verbally confirmed to [Ad Hoc] that it has given such advice to carriers." Petition at 2 fn. 2. Nevertheless, Ad Hoc claims that Sprint or any other IXC that continues to tariff its access services are "[i]n apparent conflict" with the regime established by the Commission's *Detariffing Order*. *Id.* Given the fact that Sprint is following the instructions of the Commission in this regard, it can hardly be acting contrary to what the Commission envisioned under its *Detariffing Order*.

If the Commission wishes to establish a market environment which mimics that of a fully competitive market, it should not require interexchange carriers to disclose any of the terms of their contracts negotiated on a customer-specific basis.

Respectfully submitted,

SPRINT CORPORATION



Leon M. Kestenbaum
Jay C. Keithley
Michael B. Fingerhut
1850 M Street, N.W., 11th Floor
Washington, D.C. 20036
(202) 828-7438

Its Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORPORATION** was sent by hand or by United States first-class mail, postage prepaid, on this the 28th day of January, 1997 to the below-listed parties.

Christine Jackson

January 28, 1997

R. Edward Price
Koteen & Naftalin, L.L.P.
Suite 1000
1150 Connecticut Ave., N.W.
Washington, D.C. 20036
Counsel for Rural Telephone

Reginald Bernard
SDN Users Association
P.O. Box 4014
Bridgewater, N.J. 08807

Mark Rosenblum
Roy Hoffinger
AT&T Corp.
295 N. Maple Avenue
Basking Ridge, NJ 07920

Ellen Block
Henry Levine
Levine, Blaszak, Block & Boothby
Suite 500
1300 Connecticut Ave., N.W.
Washington, D.C. 20036
Counsel for Ad Hoc

Wayne Black
C. Douglas Jarrett
Keller and Heckman LLP
1001 G Street, N.W.
Washington, D.C. 20001
Counsel for American Petroleum

Michael Shortley, III
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646-0700

Kathy Shobert
General Communication, Inc.
Suite 900
901 15th Street, N.W.
Washington, D.C. 20005

Russell Blau
Pamela Arluk
Swidler & Berlin, Chtd.
3000 K St., N.W., Suite 300
Washington, D.C. 20007
Counsel for Telco Communications

Cheryl Tritt
Joan Neal
Morrison & Foerster LLP
2000 Pennsylvania Ave., N.W.
Suite 5500
Washington, D.C. 20006

Philip Permut
Peter Batacan
Kelley Drye & Warren LLP
Suite 500
1200 19th Street, N.W.
Washington, D.C. 20036
Counsel for Western Union

Charles Hunter
Catherine Hannan
Telecom Management
Suite 701
1620 I Street, N.W.
Washington, D.C. 20006

International Transcription
Service
1919 M St., N.W., Suite 246
Washington, D.C. 20554